



Re: MUR 6973  
Melissa Flores  
to:  
kcollins  
11/13/2015 10:56 AM  
Cc:  
Steve Gold  
Hide Details  
From: Melissa Flores <flores@actblue.com>  
To: kcollins@fec.gov;  
Cc: Steve Gold <steve@actblue.com>

2 Attachments



MUR 6973 - ActBlue Designation of Counsel.pdf MUR 6973 - ActBlue Response Nov 13 2015.pdf

Ms. Collins,

Attached please find ActBlue's response to MUR 6973, as well as the Designation of Counsel form. Please let us know if the Commission has any questions or would like to discuss any parts of the complaint or our response.

Thank you,  
Melissa

On Mon, Nov 2, 2015 at 11:13 AM, <kcollins@fec.gov> wrote:  
You are very welcome!

*Kim Collins, Paralegal*

*Complaints Examination  
and Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463  
202-694-1650*

CELA

2015 NOV 13 AM 11:41

FEDERAL ELECTION  
COMMISSION

From: Steve Gold <steve@actblue.com>  
To: kcollins@fec.gov  
Cc: Melissa Flores <flores@actblue.com>  
Date: 11/02/2015 12:08 PM  
Subject: Re: MUR 6973

We will do that. Thank you for your prompt response.

Steven Gold  
General Counsel  
ActBlue  
[steve@actblue.com](mailto:steve@actblue.com)  
[617.500.4175](tel:617.500.4175)  
[www.actblue.com](http://www.actblue.com)

On Mon, Nov 2, 2015 at 11:55 AM, <[kcollins@fec.gov](mailto:kcollins@fec.gov)> wrote:  
Good morning,

I will be very happy to respond to your questions.

Your calculation for the response due date is correct. Due to the Federal holiday, Veterans Day, our office will be closed, taking this into account we can push the due date to Monday, November 16, 2015.

We would appreciate it if you would submit the Designation of Counsel form provided in the complaint package.

If you have any other questions or concerns please contact me at [202-694-1650](tel:202-694-1650).

Have a great day,

Kim

*Kim Collins, Paralegal*  
*Complaints Examination*  
*and Legal Administration*  
*Federal Election Commission*  
*999 E Street, N.W.*  
*Washington, DC 20463*  
*[202-694-1650](tel:202-694-1650)*

RELEASED  
FEDERAL ELECTION  
COMMISSION  
2015 NOV 13 AM 11:41  
CELA

From: Steve Gold <[steve@actblue.com](mailto:steve@actblue.com)>  
To: [kcollins@fec.gov](mailto:kcollins@fec.gov)  
Cc: Melissa Flores <[lflores@actblue.com](mailto:lflores@actblue.com)>  
Date: 11/02/2015 11:12 AM  
Subject: MUR 6973

Ms. Collins,

Last Friday, October 30th, we received the complaint designated MUR 6973 by the FEC. The cover letter states that any response we wish to provide to the FEC must be submitted within 15 days of our receipt of the complaint. We wish to submit a response, so I would like to confirm some relevant procedures with you.

1. Since we received the complaint on October 30th, we understand our response to be due by November 14th. Since the complaint was simply sent by first class mail, I presume there is no other way the FEC would be aware when we received the complaint. Please confirm that our response is due on the 14th.

2. The complaint packet included a form for notifying the FEC of ActBlue's intent to be represented by counsel. I am the General Counsel of ActBlue, and Ms. Flores, copied here, is In-House Counsel to ActBlue. We will be handling ActBlue's response as part of our regular duties as employees of ActBlue. Please advise whether we need to notify the FEC of this using the included form.

Thank you.

--  
Steven Gold  
General Counsel  
ActBlue  
[steve@actblue.com](mailto:steve@actblue.com)  
[617.500.4175](tel:617.500.4175)  
[www.actblue.com](http://www.actblue.com)

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Melissa Flores  
In-House Counsel  
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T: 617-299-8846  
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ActBlue

366 Summer Street  
Somerville, MA 02144

phone: 617.517.7600  
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actblue.com



November 13, 2015

Federal Election Commission  
Mr. Jeff S. Jordan  
Office of Complaints Examination & Legal Administration  
Attn: Kim Collins  
999 E Street, NW  
Washington, DC 10463

CELA

2015 NOV 13 AM 11:42

FEDERAL ELECTION  
COMMISSION

Re: MUR # 6973

Dear Mr. Jordan:

ActBlue is in receipt of a complaint filed by Mr. Timothy La Sota ("complainant"), MUR # 6973, and this response is filed on behalf of ActBlue. For the reasons set forth below, the FEC ("Commission") should find no reason to believe that ActBlue has violated the law or any of the Commission's regulations. Therefore, ActBlue respectfully requests that no action be taken against it and the complaint be dismissed.

1. Background about ActBlue

ActBlue is registered with the Commission as a non-connected federal committee and works to increase grassroots participation in the financing of political campaigns. ActBlue operates and maintains the website [www.actblue.com](http://www.actblue.com), which provides Internet-based tools, primarily including online contribution forms, for Democratic candidates and committees to process campaign contributions. ActBlue acts as an intermediary, within the meaning of 52 USC § 30116(a)(8), for individual contributions made on the website to Democratic candidates and committees. ActBlue does not solicit contributions for any candidate or committee other than itself.

2. The Complaint

ActBlue is named in only one section of the multi-page complaint against Mr. Kihuen, during a discussion of campaign expenditures. The complaint mistakenly concludes that a page on Mr. Kihuen's website is paid for by ActBlue. The complainant appears to confuse a stand-alone contribution form hosted on the ActBlue website with Mr. Kihuen's campaign website.

The complaint describes the process of arriving at this page on the ActBlue website by visiting Mr. Kihuen's campaign website and clicking on a link in a solicitation on that website. See Complaint, p. 5. The complaint fails to mention that Mr. Kihuen's website, where the solicitation occurred, is required to, and in fact does, have a disclaimer which makes clear that the website is paid for by the Kihuen campaign. The complainant asserts that the disclaimer at the bottom of the Mr. Kihuen's contribution form on ActBlue's website is incorrect because it includes a "Paid for by ActBlue" disclaimer.

a. Disclaimers on the ActBlue Website

Pursuant to 11 CFR § 110.11, all public communications require a disclaimer.

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Communications over the Internet are not considered public communications, except for communications placed for a fee on another person's website. See 11 CFR § 100.26. ActBlue does not charge candidates or committees a fee to create a contribution form hosted on the ActBlue website; any candidate, committee, or member of the public, can create a contribution form entirely for free, similar to a service such as YouTube which allows users to create a webpage to host a video for free. Since it is not placed on the ActBlue website for a fee, the contribution form is not a public communication of the person creating it. Therefore, pursuant to 11 CFR §§ 110.11 and 100.26, ActBlue contribution forms do not require a disclaimer as a public communication.

However, ActBlue is registered with the Commission as a non-connected committee. Pursuant to 11 CFR § 110.11(a)(1), all websites of a political committee must contain a disclaimer. This requirement is an alternative to the disclaimer required for public communications. "Congress required a disclaimer whenever a political committee makes a disbursement for a class of communications, regardless of the content of the communication. In contrast, for all other persons, Congress only required a disclaimer if the communication contains specific content. . . ." Internet Communications, 71 Fed. Reg. 18589, 18600 (Apr. 12, 2006) (internal quotation marks omitted). The disclaimer must appear on every page of the website to identify it as belonging to the political committee. Consequently, ActBlue includes a standard disclaimer on every page of its website, including contribution forms hosted on the ActBlue domain.

Like a page on the YouTube website, contribution forms on ActBlue's website are simple pages created from a template, and they generally consist of little more than a web form designed to capture the information necessary to facilitate the processing of a contribution. They include virtually no content beyond essential details about the candidate or committee receiving the contribution, so there is little room for confusion. Almost all visitors to an ActBlue contribution form arrive through a link in a public communication from a campaign or that campaign's supporters, just as the complainant did. These campaign communications should include important identifying information about the candidate or committee that is responsible for the content, and they are generally required to include the section 110.11 disclaimer. There should be no confusion about who is responsible for any of the content in the earlier communication that contained the initial solicitation and directed the contributor to the contribution form on the ActBlue site simply to make a contribution.

Section 110.11 was written at a time when few websites, and really no political websites, were designed to permit users to generate their own content. Implicit in the requirement that the website of a political committee identify the committee as the owner of the site is the notion that all of the content on the site belongs to the political committee. Given that the ActBlue contribution forms are not public communications, are not paid for by anyone else, and serve a functional rather than a communicative purpose, adding a disclaimer with information about the creator of each contribution form on every page of the site would not only be impractical, it would provide no useful information to the public. As applied to ActBlue's website, the best reading of section 110.11 dictates that every page on the site be identified as one paid for by ActBlue.

**b. Complaint's Assertion that ActBlue Paid for Candidate's Website**

ActBlue does not provide tools for candidates to create their own fully functional web pages to be hosted on the ActBlue domain, but rather ActBlue provides tools for optimized stand-alone contribution forms. When the complaint alleges "Kihuen's website page says it is paid for by

ActBlue," the complainant is mistakenly conflating a website with a stand-alone contribution form hosted on the ActBlue domain. See Complaint, pp. 4-5. Mr. Kihuen's website is entirely separate from the ActBlue website that hosts contribution forms for candidates and committees, and ActBlue does not pay for any candidate or committee's website. While the contribution form includes the ActBlue disclaimer, Mr. Kihuen's website most certainly does not.

### 3. Conclusion

For the foregoing reasons, the Commission should dismiss the complaint against ActBlue.

Respectfully submitted,

*M Flores*

Melissa Flores, In-House Counsel  
Steve Gold, General Counsel

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FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

FAX 202-219-3923

CELA

2015 NOV 13 AM 11:41

FEDERAL ELECTION  
COMMISSION

MUR # 6973

Name of Counsel: Steven Gold, Melissa Flores

Firm: ActBlue

Address: 366 Summer St.

Somerville, MA 02144

Telephone: 617-517-7600

Fax: \_\_\_\_\_

E-mail: flores@actblue.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/12/15

Date

*E. Hill*  
Signature (Respondent/Agent)

Executive Director

Title

RESPONDENT: ActBlue

(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 366 Summer St.

(Please Print)

Somerville, MA 02144

Telephone (H): 617-517-7600

(W): \_\_\_\_\_

E-mail: flores@actblue.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(1)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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